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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 WELLTEC MACHINERY USA, INC.,  
12 a California corporation, as assignee of  
13 Welltec Machinery Limited, a Hong Kong  
14 registered Company,

Plaintiff,

14 vs.

15 TAYLOR'S INDUSTRIAL SERVICES,  
16 LLC, *also known as* HPM Division,

17 Defendant.

CASE NO. 08CV877 BEN (LSP)

**ORDER GRANTING MOTION TO  
DISMISS FOR LACK OF  
PERSONAL JURISDICTION**

**[Doc. No. 3]**

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19 **I. INTRODUCTION**

20 Plaintiff Welltec Machinery USA, Inc. ("Welltec" or "Plaintiff") filed this breach-of-  
21 contract action against Defendant Taylor's Industrial Services, LLC ("Taylor's" or "Defendant") in  
22 a California state court. *See* Doc. No. 1. On May 16, 2008, Taylor's removed this action to this  
23 Court pursuant to 9 U.S.C. § 203, which provides for an original federal jurisdiction over an action  
24 falling under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.  
25 Defendant subsequently filed a timely Motion to Dismiss, asking the Court to dismiss the case for  
26 lack of personal jurisdiction. In the alternative, Defendant asked the Court to dismiss or transfer  
27 the case due to improper venue or to stay the action, pending arbitration.

28 At the outset, the Court notes that there appears to be a clear, binding arbitration agreement  
between the parties. *See* Doc. No. 1, at 23. The agreement provides that "[a]ny dispute or claim

1 arising out of this agreement shall be referred to and finally resolved by the International Chamber  
 2 of Commerce in accordance with its Conciliation and Arbitration Rules. The venue of such  
 3 arbitration shall be in Hong Kong.” *Id.* Plaintiff neither disputes the existence of a binding  
 4 arbitration agreement nor argues that the venue in this Court is proper. In fact, Plaintiff notes that  
 5 it “does not oppose an order staying this litigation and compelling arbitration in Hong Kong.”  
 6 Doc. No. 7, at 5.

7 Against this backdrop, Plaintiff claims that, “by failing to timely respond . . . Defendant has  
 8 waived its objections to personal jurisdiction, forum (i.e. arbitration) and venue.” *See* Doc. No. 7,  
 9 at 5 (emphasis omitted). Plaintiff’s contention misinterprets the most basic requirements of the  
 10 Federal Rules of Civil Procedure regarding time computation for filing a responsive pleading, and  
 11 the Court will not expend judicial resources on educating Plaintiff’s attorneys on the cannons of  
 12 the procedural rules. *See* Fed. R. Civ. P. Rules 6(a) & 81(c). Simply stated, Plaintiff’s contention  
 13 is incorrect.

14 Having reviewed the papers and the declarations, the Court GRANTS the motion to  
 15 dismiss for lack of personal jurisdiction. Because the instant action is dismissed, the Court will  
 16 not address Defendant’s remaining contentions for dismissal.

## 17 18 **II. STANDARD OF REVIEW**

19 Personal jurisdiction is required for the Court to impose a judgment on a Defendant. *See*  
 20 *Burnham v. Sup. Ct. of Cal., County of Marin*, 495 U.S. 604, 610 (1990); *Action Embroidery Corp.*  
 21 *v. Atlantic Embroidery, Inc.*, 368 F.3d 1174, 1180 (9th Cir. 2004). “Where a defendant moves to  
 22 dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the burden of  
 23 demonstrating that jurisdiction is appropriate.” *Schwarzenegger v. Fred Martin Motor Co.*, 374  
 24 F.3d 797, 800 (9th Cir. 2004); *see also, Mattel, Inc. v. Greiner and Hausser GmbH*, 354 F.3d 857,  
 25 862 (2003) (“[Plaintiff] bears the burden of establishing the district court’s personal jurisdiction  
 26 over the Defendants.”). Furthermore, “[w]hen a defendant moves to dismiss for lack of personal  
 27 jurisdiction, the plaintiff is ‘obligated to come forward with facts, by affidavit or otherwise,  
 28 supporting personal jurisdiction.’” *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986) (citations

1 omitted).

2 The court may consider evidence presented in declarations in making its jurisdictional  
3 determination. *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). “When a district court  
4 acts on a defendant’s motion to dismiss without holding an evidentiary hearing, the plaintiff need  
5 make only a prima facie showing of jurisdictional facts to withstand the motion to dismiss.” *Id.*  
6 (citations omitted). The facts offered by the plaintiff are taken as true for the purposes of a  
7 12(b)(2) motion to dismiss where the facts are not directly controverted; and conflicts contained in  
8 the parties’ affidavits must be resolved in the plaintiff’s favor. *Id.*

9 “Constitutional due process concerns are satisfied when a nonresident defendant has  
10 ‘certain minimum contacts with the forum such that the maintenance of the suit does not offend  
11 traditional conceptions of fair play and substantial justice.’” *Id.* at 923 (quoting *International*  
12 *Shoe Co. v. State of Washington*, 326 U.S. 310, 316 (1945)). “Where a defendant deliberately  
13 engages in significant activities within a state, purposely availing itself of the privilege of  
14 conducting business there, it is presumptively reasonable to require that defendant ‘submit to the  
15 burdens of litigation in that forum as well.’” *Unocal Corp.*, 248 F.3d at 923 (quoting *Burger King*  
16 *v. Rudzewicz*, 471 U.S. 462, 475-76 (1985)).

### 17 18 **III. DEFENDANT’S MOTION TO DISMISS**

19 Using the “minimum contacts” analysis, jurisdiction over a defendant may be either general  
20 or specific. “If the defendant’s activities in the forum are substantial, continuous and systematic,  
21 general jurisdiction is available[.]” *Unocal Corp.*, 248 F.3d at 923 (citation omitted). Specific  
22 jurisdiction may be exercised over a defendant whose contacts with the forum give rise to the  
23 action before the court. *Id.* The Ninth Circuit has interpreted this requirement “as allowing  
24 jurisdiction . . . over a nonresident defendant . . . if the specific cause of action arises out of a  
25 defendant’s more limited contacts with the state so that California may exercise *limited* or *specific*  
26 jurisdiction over him.” *Roth v. Garcia Marquez*, 942 F.2d 617, 620-21 (emphasis in original).

27 It appears that the only basis for supporting personal jurisdiction in Plaintiff’s Opposition is  
28 Plaintiff’s claim that, at some point in time, Defendant referred its potential customers who were

1 from California to another company that does business in California. *See* Doc. No. 7-2, Exh. T.  
2 Plaintiff does not allege that this referral system currently exists and does not claim that there is a  
3 connection between the referral system and the breach of contract in question. Applying the  
4 jurisdictional standards and utilizing the Ninth Circuit’s test for analyzing personal jurisdiction, the  
5 Court finds that Welltec has failed to establish either general or specific jurisdiction over Taylor’s.

6  
7 ***A. The Court Lacks General Jurisdiction over Taylor’s***

8 Defendant Taylor’s is organized under the laws of Illinois with its principal place of  
9 business in Ohio. Doc. No. 4, at 3. There is no question that Taylor’s is not subject to this Court’s  
10 general jurisdiction. It has not engaged in systematic and continuous contacts and has had virtually  
11 no contact with California. It does not conduct business in California, does not own property in  
12 California, does not have customers, and does not advertise in this state.

13 Plaintiff’s 1-page opposition of the jurisdictional issue is accompanied by a 70-page  
14 declaration, which is heavy on facts of very little relevance. *See* Doc. No. 7-2. From the  
15 declaration and documents attached, it is clear that the only “contact” Defendant has had with  
16 California was the following link, which at some point was present on Defendant’s website: “Is  
17 your company located in California, Arizona, Utah, Nevada...” *Id.* The customers who clicked on  
18 the link were then instructed as follows: “call The Dabr Company of Fullerton, CA our  
19 representatives for Extrusion, injection molding and die cast machines. JR Duff, President of Dabr  
20 will welcome your call.” *Id.* Notably, Plaintiff does not allege that this link is either currently  
21 active or was active at the time of the events in question; plaintiff also does not argue that a  
22 website referral “arises out of or relates to the defendant’s forum-related activities.”<sup>1</sup> *See*  
23 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).

24 Additionally, Plaintiff cites a 9-year-old press release as evidence of a “purported business  
25 relationship” between Defendant and the Dabr Company. Doc. No. 7-2, at 7. Plaintiff does not

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27 <sup>1</sup> Furthermore, contrary to Plaintiff’s contention that this fact establishes personal jurisdiction  
28 over Defendant, this fact may possibly evidence Defendant’s explicit desire *not* to conduct business  
in California.

1 allege: (1) that Defendant is currently in a business relationship with the Dabr Company; (2) that  
 2 this “purported business relationship” existed at the time the parties entered into an agreement  
 3 giving rise to this dispute; (3) that this “purported business relationship” relates in any way to the  
 4 dispute in question; (4) that the website link in question continues to be present on Defendant’s  
 5 website; or (5) that the link in question was present at the time the parties entered into a contract  
 6 subject of the instant dispute. In its reply papers, Defendant points out: (1) that the above-  
 7 mentioned link “is outdated and obsolete”; (2) that Dabr Company “is a suspended corporation”;  
 8 and (3) that the phone number listed on Plaintiff’s exhibit “has no affiliation with [D]efendant.”  
 9 Doc. No. 8, at 4. This evidence is not controverted by Plaintiff.

10 In sum, there is no evidence that Defendant ever maintained offices, qualified to do  
 11 business, or regularly solicited business in California. Defendant has never assigned agents or  
 12 employees to work regularly in California; never owned, used, or possessed real property in  
 13 California; and never contracted to supply goods or services in California. *See McGlinchy v. Shell*  
 14 *Chemical Co.*, 845 F.2d 802, 815-816 (9th Cir. 1988) (finding no general jurisdiction under similar  
 15 circumstances). Even taken as true, Plaintiff’s contentions are insufficient for asserting general  
 16 jurisdiction over Defendant.

17  
 18 ***B. The Court Lacks Specific Jurisdiction over Taylor’s***

19 Moreover, Plaintiff’s declaration and exhibits do not evidence Defendant’s purposeful  
 20 availment – an element necessary for exercising specific jurisdiction. The Ninth Circuit has  
 21 established a three-part test for analyzing whether specific personal jurisdiction exists:

- 22 (1) The non-resident defendant must purposefully direct his activities or consummate  
 23 some transaction with the forum or resident thereof; or perform some act by which he  
 24 purposefully avails himself of the privilege of conducting activities in the forum, thereby  
 25 invoking the benefits and protections of its laws;  
 26 (2) the claim must be one which arises out of or relates to the defendant’s forum-related  
 27 activities; and  
 (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e., it  
 must be reasonable.

28 *Schwarzenegger*, 374 F.3d at 802.

1 Plaintiff “bears the burden of satisfying the first two prongs of the test. If the plaintiff fails  
2 to satisfy either of these prongs, personal jurisdiction is not established in the forum state.” *Id.* In  
3 this case, Plaintiff failed to meet this burden. Plaintiff devoted less than 1 page of its opposition on  
4 discussing the jurisdictional issue and did not address in any way the factors required for  
5 establishing specific personal jurisdiction.

6 The Court concludes that neither of the first two prongs is met. Furthermore, the facts of  
7 this case are such that the exercise of personal jurisdiction over Taylor’s would not comport with  
8 fair play and substantial justice. Purposeful availment requires that the defendant “has performed  
9 some type of affirmative conduct which allows or promotes the transaction of business within the  
10 forum state.” *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001) (citations omitted). A  
11 website referral to another company, alone, is insufficient to support personal jurisdiction. *See*,  
12 *e.g.*, *Harlow v. Children’s Hosp.*, 432 F.3d 50, 62-63 (1st Cir. 2005) (holding that referring an out-  
13 of-state patient to a pediatrician from that state did not subject the referring hospital to specific  
14 jurisdiction of that state); *Tewart Enterprises, Inc. v. Dawson*, 2007 WL 1114819, at \*6 (S.D. Ohio  
15 Apr. 13, 2007) (concluding that the defendant’s website reference to an out-of-state dealer, along  
16 with several other factors, was insufficient to assert specific jurisdiction over the defendant);  
17 *Gammino v. Verizon Comm’s, Inc.*, 2005 WL 3560799, at \*5 (E.D. Pa. Dec. 27, 2005) (holding  
18 that the defendant subsidiary’s contact with the out-of-state customers through the defendant’s  
19 website was insufficient to assert personal jurisdiction over that defendant).

20 Notably, Plaintiff does not allege that the website referral in question has generated any  
21 business or profits from California residents for Defendant. Moreover, the nature of this website  
22 referral “does not suggest that [it was] purposefully directed to [Californians] rather than a  
23 nationwide audience.” *See Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 253 (2d Cir. 2007). In  
24 sum, Plaintiff failed to allege that there is “‘something more’ than the operation of a . . . website.”  
25 *See Rio Properties, Inc. v. Rio Intern. Interlink*, 284 F.3d 1007, 1020 (9th Cir. 2002). Without  
26 more, there is no evidence that Defendant purposefully availed itself of the privilege of conducting  
27 activities in California.

28 Finally, Plaintiff does not allege or offer any support for an argument that its breach of

1 contract claim “arises out of or relates” to Defendant’s forum-related activities. *Elayyan v. Sol*  
2 *Melia, SA*, -- F. Supp. 2d --, 2008 WL 2945456, at \*14 (N.D. Ind. 2008) (citing *Purdue Research*  
3 *Foundation v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 780 (7th Cir. 2003) (“Specific jurisdiction  
4 does not exist unless a plaintiff’s claim evidences a real relationship with the state with respect to  
5 the transaction at issue.”)). Accordingly, there is no basis to exercise personal jurisdiction over  
6 Defendant.

7  
8 **IV. CONCLUSION**

9 The Motions to Dismiss for lack of personal jurisdiction is hereby GRANTED.

10  
11 **IT IS SO ORDERED.**

12 DATED: September 4, 2008

13   
14 ROGER F. BENITEZ  
United States District Judge